

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RUTH TOBIN,
Claimant,

vs.

REGIONAL TRANSIT AUTHORITY,
Employer,

and

TRAVELERS INSURANCE COMPANY,
Insurance Carrier,
Defendants.

FILED

JAN 19 2017

WORKERS' COMPENSATION

File No. 5046811

A P P E A L

D E C I S I O N

Head Note No: 1100

Claimant Ruth Tobin appeals from an arbitration decision filed on September 1, 2015. Defendants Regional Transit authority, employer, and its insurer, Travelers Insurance Company, respond to the appeal. The case was heard on March 17, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 18, 2015.

The deputy commissioner found claimant failed to carry her burden of proof that she sustained a cumulative trauma injury to her right shoulder arising out of and in the course of her employment on January 8, 2014, as alleged. The deputy commissioner awarded claimant nothing in the way of weekly benefits or medical expenses. The deputy commissioner ordered defendants to reimburse claimant for the expense of the independent medical evaluation (IME) performed by Marc Hines, M.D., on September 26, 2014. The deputy commissioner also ordered claimant to pay the costs of the arbitration proceeding.

Because the deputy commissioner found claimant failed to carry her burden of proof on the issues of causation and compensability, the deputy commissioner found other issues raised by claimant in the arbitration proceeding to be moot and the deputy commissioner did not address those issues, which include the extent of entitlement to permanent partial disability (PPD) benefits, if any, the commencement date for payment of PPD benefits, whether claimant gave timely notice of the alleged injury pursuant to

Iowa Code section 85.23, and claimant's entitlement to payment of requested past medical expenses.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained a cumulative trauma injury to her right shoulder arising out of and in the course of her employment on January 8, 2014, as alleged. Claimant asserts the deputy commissioner erred in failing to address the other issues raised in the arbitration proceeding. Claimant also asserts the deputy commissioner erred in failing to order defendant to pay the costs of the arbitration proceeding and in ordering claimant to pay those costs.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety. Defendants do not challenge the deputy commissioner's order that defendants reimburse claimant for the cost of Dr. Hines' IME.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 1, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained a cumulative trauma injury to her right shoulder arising out of and in the course of her employment on January 8, 2014, as alleged. I affirm the deputy commissioner's finding that claimant is entitled to take nothing in this matter in the way of weekly benefits or medical expenses. Because I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof on the issues of causation and compensability, I affirm the deputy commissioner's finding that it is unnecessary to address the other issues raised in the arbitration proceeding, which include the extent of entitlement to permanent partial disability (PPD) benefits, if any, the commencement date for payment of PPD benefits, whether claimant gave timely notice of the alleged injury pursuant to Iowa Code section 85.23, and claimant's entitlement to payment of requested past medical expenses. I affirm the deputy commissioner's order that defendants reimburse claimant for the cost of Dr. Hines' IME. I also affirm the deputy commissioner's order that claimant pay the costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

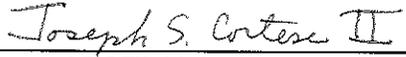
IT IS THEREFORE ORDERED that the arbitration decision of September 1, 2015, is affirmed in its entirety.

Claimant shall take nothing in the way of weekly benefits or medical expenses in this matter.

Defendants shall reimburse claimant for the cost of her independent medical evaluation with Dr. Hines pursuant to Iowa Code section 85.39.

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the arbitration proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 19th day of January, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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